

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 133 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STEEL TUBES LTD

Appearance:

1. INCOME TAX REFERENCE No. 133 of 1989
MR TANVISH U BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 24/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

In this Reference at the instance of the revenue, following three questions were referred to this Court for our opinion:-

- (i) Whether, the expenditure on account of accident insurance and medical expenses in respect of the two Managing Directors of the Company was includible for purposes of computing the disallowance under Section 40-A(5) ?"
- (ii) Whether, the receipt of Rs.47,64,070/- on account of Cash Compensatory Support (CCS) was a revenue receipt and therefore exigible to tax ?
- (iii) Whether, the expenditure of Rs.22,000/- incurred by way of fees to an Advocate was allowable as revenue expenditure ?

2. So far as the first question is concerned, it covers two items, namely, expenditure incurred on accident insurance and medical expenses in respect of the two Managing Directors of the Company- whether the same was includible for the purpose of computing the disallowance under Section 40-A(5) of the Income-tax Act.

This issue arose before this Court in the case of *Ambica Mills Ltd. vs. CIT* (1999) 235 ITR 264 wherein this Court has taken the view that if the Company had, by taking out a policy of insuring the directors against personal accidents sought in fact to insure itself in respect of the liability that may arise towards the directors as a result of accident, then that situation would be different from a director himself taking out a personal accident insurance under which he would be obliged to pay the premiums himself and not the Company. On the basis of the facts found in that case, this Court has held that the entire expenses of the insurance premium paid on the insurance policy in respect of Managing Directors taken by the Company was allowable as expenditure of the Company. The decision to take policy was taken by the Company and there was nothing on record to show that the Director himself wanted to take the insurance.

In the case before us, the Tribunal has also found as a matter of fact that the insurance policy of the director was taken by the Company and premium was also paid by the Company. Hence, this issue squarely falls within the ratio laid down by this Court in *Ambica Mill's case* (supra).

So far as the medical expenses are concerned, the same issue arose in the case of Ambica Mills Ltd. vs. CIT (supra) wherein it is held that reimbursement of medical expenses incurred by the Director is a benefit of the Director within the meaning of Section 40(c)(i) of the Act, and is not an allowable expenditure.

Following this decision, we answer question No.1 partly in favour of the assessee so far as the insurance premium is concerned and partly against the assessee and in favour of the revenue so far as the reimbursement of the medical expenses is concerned.

3. As far as the second question is concerned, the Tribunal has merely relied on the Full Bench decision of Delhi Bench of the Tribunal and the said decision was reversed by the Delhi High Court in the case of Gedore Tools Pvt. Ltd. vs. CIT, (1999) 238 ITR 268 wherein the view was taken that cash compensatory support receipts received from the Government would be taxable receipts in the hands of the assessee and constitute profits and gains. The Rajasthan High Court has also taken the same view in the case of Commissioner of Income-tax vs. Emerby Stone Manufacturing Co., (1997) 225 ITR 480 wherein it is held that, "in respect of incentives received by exporters, new clauses (iiia), (iiib) and (iiic) have been inserted in Section 28 of the Income-tax Act, 1961, to provide that profits on sale of import entitlement licences, cash compensatory support and drawback of duty respectively shall be chargeable to income-tax under the head "Profits and gains of business or profession". These have, further, been included in the definition of the term "income" in clause (24) of section 2. These amendments will take effect retrospectively from the dates from which these incentives were introduced. Hence, the cash compensatory support received by an exporter would be assessable."

No contrary judgment has been pointed out taking the different view than the view taken by these two High Courts and accordingly we hold that the receipt of Rs.47,64,070/- as cash compensatory support was a revenue receipt and, therefore, exigible to tax. This question is, therefore, answered in the affirmative i.e. in favour of the revenue and against the assessee.

4. So far as the third question is concerned, it is observed by the Tribunal in its order that the assessee had advanced certain sums of money to acquire premises in the property known as Neptune Tower. However, the said transaction was not materialized and the assessee had to

incur an expenditure of Rs.22,000/- by way of fees paid to Advocate for recovering the sums so invested. The Assessing Officer has taken the view that the expenditure was a capital loss suffered in connection with the capital asset and the said finding was confirmed by the Commissioner (Appeals). The matter was taken to the Tribunal and it was contended before the Tribunal that the expenditure so incurred has no direct connection with the acquisition of the capital asset but it was in fact connected with the recovery of the amount which was blocked by way of advance for the purpose of capital asset and, therefore, an allowable expenditure. The Tribunal has accepted this contention urged on behalf of the assessee and held that the amount was incurred only for the purpose of recovery of the amount advanced for the acquisition of the capital asset. The Tribunal has further observed that the impugned asset is not acquired and, therefore, the transaction or the agreement failed. The Tribunal has further taken the view that once there was a breach of an agreement it could not be said that the expenditure incurred for recovery of the advance had direct connection with the acquisition of the capital asset. According to the Tribunal, the expenditure incurred had only connection with the recovery of the amount and, therefore, the same ought to have been considered as laid out during the course of carrying on business and, therefore, a revenue expenditure which should have been required to be allowed.

We find no error in the view taken by the Tribunal and hence we confirm the finding arrived at by the Tribunal. We, therefore, answer this question in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J)

(K.A. Puj, J)

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